IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1244 OF 2004

IN

SUIT NO.1259 of 2004

M/s.Kukreja Construction Co. ... Plaintiffs.

vs.

Ravindra Harishankar Mantri & others ... Defendants.

Mr.D.D.Madan with Ms.Alpana Ghone i/b. DSK Legal, for Plaintiffs.

Mr.Chetan Kapadia i/b. M.I.Ali, for Defendant nos.1 to 4.

Mr.Milind More, Asstt.Government Pleader for Defendant no.8.

CORAM: D.K.DESHMUKH,J.

DATED: 18th March, 2005.

P.C.:-

1. This is a Notice of Motion taken out by the plaintiffs. The plaintiffs have filed the suit for

specific performance of the agreement dated 10th February,1997. By prayer clause (a) and (b) of the Notice of Motion, interim order for deposit of certain amount in the Court is sought, because after the date of the agreement, a portion of the land was compulsorily acquired and the amounts were paid as a compensation. In my opinion, the plaintiffs are not justified in seeking interim orders in terms of prayer clause (a) and (b), because the plaintiffs may become entitled to this amount only after a decree of specific performance is passed in his favour. Admittedly, no averments have been made that either the defendant nos.1 to 4 or the defendant no.8 are disposing of their property to defeat the claim of the plaintiffs. As the right of the plaintiffs is yet to be established, in my opinion, the drastic interim orders which are claimed by prayer clause (a) and (b) cannot be granted.

2. So far as the grant of interim order in terms of prayer clause (c) is concerned, an interim order in terms of prayer clause (c) is sought against the defendant nos. 1 to 4. The learned counsel for defendant nos.1 to 4 states that in case the Court directs the plaintiffs to deposit the balance consideration amount as per the agreement which is approximately Rs.7,00,000/-

(Rupees Seven Lakhs only), then defendant nos.1 to 4 do not have any objection for granting interim order in terms of prayer clause (c). I find that the request made by defendant nos. 1 to 4 is reasonable because even according to the plaintiffs, the amount approximately Rs.7,00,000/- would be payable in case the plaintiffs succeed in the suit.

3. In this view of the matter therefore, the notice of motion is granted in terms of prayer clause (c) subject to the condition that within a period of four weeks from today, the plaintiffs shall deposit in this Court an amount of Rs.7,00,000/- (Rupees Seven lakhs only).

4. In case the amount is so deposited, the Prothonotary and Senior Master of this Court shall invest that amount in a fixed deposit in a Nationalised bank during the pendency of the suit.

Notice of Motion disposed of.

18.3.2005 ---